

AMENDED IN ASSEMBLY MAY 8, 2003

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 1399**

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**Introduced by Assembly Member Longville**

February 21, 2003

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An act to amend Section 1786.20 of the Civil Code, relating to investigative consumer reports.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1399, as amended, Longville. Investigative consumer reporting agencies.

Existing law regulates the activities of investigative consumer reporting agencies and requires these agencies to establish reasonable procedures to ensure that specified, prohibited items of information concerning consumers are not part of the reports they furnish. Existing law also requires investigative consumer reporting agencies to keep records of the purposes for which information is sought by users and to keep investigative consumer reports for two years after the reports are provided, among other things. Existing law provides that an investigative consumer reporting agency that violates these provisions is liable to the consumer affected for an amount of not less than \$25,000, and that a court may award the costs of the action and reasonable attorney's fees in a successful action to enforce liability.

This bill would revise the liability provisions described above. The bill would provide ~~for a civil penalty~~ *that an entity is liability to the consumer in an amount not to exceed \$2,500 for each negligent*

violation or for each knowing and willful violation of the requirements described above. The bill would limit the total ~~penalties~~ *liability* that may be imposed for negligent violations to \$500,000 for each consumer. The bill would require a court to consider certain factors when determining the amount of the ~~penalty to be assessed~~ *liability*. The bill would require that the ~~penalties~~ *amount of liability* be doubled if a violation results in identity theft.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1786.20 of the Civil Code is amended  
2 to read:  
3 1786.20. (a) An investigative consumer reporting agency  
4 shall maintain reasonable procedures designed to avoid violations  
5 of Section 1786.18 and to limit furnishing of investigative  
6 consumer reports for the purposes listed under Section 1786.12.  
7 These procedures shall require that prospective users of the  
8 information identify themselves, certify the purposes for which  
9 the information is sought and that the information will be used for  
10 no other purposes, and make the certifications described in  
11 paragraph (4) of subdivision (a) of Section 1786.16. From the  
12 effective date of this title, the investigative consumer reporting  
13 agency shall keep a record of the purposes for which information  
14 is sought, as stated by the user. The investigative consumer  
15 reporting agency may assume that the purpose for which a user  
16 seeks information remains the same as that which a user has  
17 previously stated. The investigative consumer reporting agency  
18 shall inform the user that the user is obligated to notify the agency  
19 of any change in the purpose for which information will be used.  
20 An investigative consumer reporting agency shall make a  
21 reasonable effort to verify the identity of a new prospective user  
22 and the uses certified by the prospective user prior to furnishing the  
23 user any investigative consumer reports. An investigative  
24 consumer reporting agency may not furnish an investigative  
25 consumer report to a person unless it has a written agreement that  
26 the investigative consumer reports will be used by that person only  
27 for purposes listed in Section 1786.12.



(b) Whenever an investigative consumer reporting agency prepares an investigative consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. An investigative consumer reporting agency shall retain the investigative consumer report for two years after the report is provided.

(c) An investigative consumer reporting agency may not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate applicable federal or state equal employment opportunity law or regulation.

(d) (1) An entity that negligently violates this section shall be ~~liable for a civil penalty to the consumer affected in an amount~~ not to exceed two thousand five hundred dollars (\$2,500) for each violation. The total ~~of civil penalties awarded liability~~ for negligent violations of this section may not exceed five hundred thousand dollars (\$500,000) for each consumer.

(2) An entity that knowingly and willfully violates this section shall be ~~liable for a civil penalty to the consumer affected in an amount~~ not to exceed two thousand five hundred dollars (\$2,500) for each violation. There is no limitation on the total ~~amount of civil penalties awarded liability~~ for a knowing and willful violation of this section.

(3) In determining the amount of the ~~penalty to be assessed liability~~ under paragraph (1) or (2), the court shall consider the following factors:

(A) The total assets and net worth of the violating entity.

(B) The nature and seriousness of the violation.

(C) The persistence of the violation, and any attempts to correct the situation leading to the violation.

(D) The length of time the violation occurred.

(E) The number of times the entity has violated this section.

(F) The harm the violation has caused to consumers.

(G) Any gain derived from the violation.

(H) The effect of the ~~penalty or penalties~~ *amount of liability* on the overall fiscal solvency of the entity.

1 (4) If a violation of this section results in an identity theft, as  
2 defined by Section 530.5 of the Penal Code, the ~~civil penalties set~~  
3 ~~forth in~~ *amount of liability under* this section shall be doubled.

